

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

California Water Service Company (U 60-W), for authority to increase rates charged for Water Service in the Antelope Valley District by \$437,218 or 36.94% in fiscal year 2006-2007; by \$145,000 or 8.94% in fiscal year 2007-2008; and by \$145,000 or 8.21% in fiscal 2008-2009

Application 05-08-006  
(Filed August 8, 2005)

And Related Matters

A.05-08-007  
A.05-08-008  
A.05-08-009  
A.05-08-010  
A.05-08-011  
A.05-08-012  
A.05-08-013

**OPENING BRIEF  
OF THE DIVISION OF RATEPAYER ADVOCATES**

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Pursuant to Rule 75 of the California Public Utilities Commission's (Commission) Rules of Practice and Procedure, the Division of Ratepayer Advocates (DRA) hereby files its Opening Brief in the above captioned proceeding.

**I. INTRODUCTION**

California Water Service Company (CWS) filed its Applications for Authority to Increase Rates on August 8, 2005. DRA filed a timely Protest. Testimony was timely served and evidentiary hearings were held.

CWS originally sought a rate increase of 36.94% in 2006-2007, 8.94% in 2007-2008, and 8.21 % in 2008-2009, for the Antelope District. DRA's Report recommended

an increase of 25% in 2006-2007, and inflationary increases for the two escalation years, for Antelope Valley District. (See Exhibit (Ex.) DRA-1, p.iv.) In addition to Antelope Valley District application, CWS has sought authority to raise rates in the districts of: Bear Gulch, Dominguez-South Bay, Hermosa-Redondo, Kern River Valley, Marysville, Palos Verdes, and Redwood Valley. Some of the requested increases were as high as 322.7%. (See Ex. P-RV-CS, p.2.) These applications were consolidated with the Antelope Valley District Application in the Assigned Commissioner's Scoping Memorandum.

After extensive, and still ongoing, settlement talks DRA and CWS have reached agreement on most issues. These will be addressed in a settlement proposal(s) to be filed separately.

This brief addresses the remaining contested issues and DRA's recommendations for resolution of those issues. These issues represent a choice between the reasonable protection of ratepayers and unnecessary and unjustified rewards to CWS. As the record in this proceeding shows, CWS has either not met its burden of proof regarding several elements of its requested rate increases (e.g., outstanding plant issues in the Coast Springs sub-district of Redwood Valley) or is attempting to block constructive policy put forth by DRA (e.g., an appropriate rate of return).

This brief follows the format requested by Administrative Law Judge (ALJ) McVicar. (See ALJ McVicar Volume 13 Reporters Transcript (RT) 991.)

## **II. RESULTS ON OPERATIONS**

### **1. Water Sales, Customer Growth, and Operating Revenue**

CWS and DRA originally had differing recommendations regarding these costs. Through discovery requests and settlement talks DRA and CWS have reached a common recommendation. For all districts at issues in this General Rate Case filing (GRC), DRA expects these costs to be included in a settlement proposal(s) to be filed separately. These issues will not be addressed further in this brief.

## **2. Operations and Maintenance Expenses**

Operation and maintenance expenses include a variety of costs: purchased water; purchased power; purchased chemicals; payroll; postage; transportation; conservation costs; etc.... Through discovery requests and settlement talks DRA and CWS have reached a common recommendation for these costs. For all districts at issue, DRA expects these costs to be included in a settlement proposal(s), to be filed separately. These issues will not be addressed further in this brief.

## **3. Administrative and General Expenses**

Through discovery requests and settlement talks DRA and CWS have reached a common recommendation for these costs. For all districts at issue, DRA expects these costs to be included in a settlement proposal(s), to be filed separately. These issues will not be addressed further in this brief.

## **4. Taxes**

Through discovery requests and settlement talks DRA and CWS have reached a common recommendation for these costs. For all districts at issue, DRA expects these costs to be included in a settlement proposal(s), to be filed separately. These issues will not be addressed further in this brief.

## **5. Plant and Capital Expenses**

For all districts and projects, except the Redwood Valley District projects discussed below, DRA and CWS have reached a common recommendation for these costs. DRA expects these issues to be included in a settlement proposal(s), to be filed separately.

### **1) Redwood Valley Sub-district – Coast Springs**

In this sub-district there is disagreement regarding projects: #14318 and #14319, both are facilities to address water quality. (See Ex. DRA-8, pp. 7-10 to 7-12.)

CWS requested \$406,350 for project #14318 in its amendment to its application. (See Ex. P-RV-CS, p.3.) DRA found an advice letter filing capped at \$227,800 to be

appropriate. (See Ex. DRA-8, p.7-11.) CWS did not rebut DRA's findings and presumably agreed with DRA. (See generally Ex. CWS-1.)

CWS requested \$242,800 for project #14319 in its amendment to its application. (See Ex. P-RV-CS, p.3.) Originally, DRA recommended an advice letter filing capped at \$239,200. (See Ex. DRA-8, pp.7-12.) However, given the discussion below, DRA now believes this advice letter should be capped at \$114,000. CWS disagreed with DRA's original conclusions. (See CWS-1, pp. 37-38.) The two projects were originally one project (#8087) which was cancelled and replaced with these two separate project numbers. (See CWS/Francis Vol. 13 RT 909.)

Since these projects were not originally included in the application, DRA's analysis has been ongoing and could not be finalized by the time its testimony was due. Furthermore, during the evidentiary hearings the parties conducted a field trip to the job site and engaged in additional discovery. (CWS/Duncan Vol. 13 RT 854, 984; see also Ex. DRA-17.) This additional review in conjunction with the development of the evidentiary record through cross examination has strengthened DRA's conclusion that these projects are excessive in cost and re-affirms the conclusion that the projects must be deferred to an advice letter filing, which should now be capped at \$227,800 for project #14318, and \$114,000 for project #14319. Furthermore, these advice letters should be reviewed together and CWS must be required to provide all workpapers and supporting document at the time of the advice letter filing.

These projects address the need for safe drinking water. Safe drinking water is essential but this goal should be met without excessive costs and poor project oversight. It is this concern for public health that tempers DRA's position from disallowance to advice letter filing.

Regarding project #14318, DRA stands by its original testimony that: (1) this project will not be done in time to include in the first GRC year; (2) the State Revolving Fund (SRF) loan is for a larger amount that CWS reported; and, (3) there are excess Safe Drinking Water Bond funds that can be applied to this project. (See Ex. DRA-8, pp. 7-10 to 7-11.) CWS has agreed with these conclusions. (See Ex. CWS-1, pp. 37-38.)



Regarding project #14319, DRA also states by its original testimony that CWS failed to adequately justify its costs. (See *id.* at 7-11 to 7-12.) For example, the CWS labor cost of \$93,500 and overhead of \$31,450 is wholly without support. (See *id.*)

In addition to DRA's original analysis and findings, DRA continues to find that CWS failed to justify its costs and cannot adequately explain these projects and thus revises downward DRA's allowance. Plus, DRA has concerns about the lack of competitive bids & the apparent misuse of state funding opportunities.

**(a) Inadequate explanation of costs**

When DRA, and other parties, requested a cost break down of these projects, CWS's answers have been incomplete at best. (See e.g., DRA/Lan Vol. 13 RT 984.) When responses were provided they were not clear. For example, piping costs were part of project #8087. (See Ex. Young-2.) To what extent these costs are part of project #14318 and #14319 is unclear, nor is it clear that the piping cost of project #8087 is not counted in both #14318 and #14319. To what extent the actual piping cost is reasonable is also not apparent. The estimated cost for the new facility's piping, when it was part of #8087, was \$15,000. (See *id.*) In the contractor's contract the price is \$34,000. (See CWS/Francis Vol. 13 RT 919-920.) For external piping, as opposed to facility piping, the original estimate was \$40,000 but the contracted price was \$77,850. (See *id.* at 920.)

Another example is electrical costs, which jumped from \$50,000 to \$135,850. (See *id.* at 921.) Electrical generators are another example. The original estimate was \$12,000 but now CWS cannot give a specific cost because it is combined with a number of other items in the contractor's contract. (See *id.* at 939.) The building itself went from an estimated \$27,000 to about \$200,000. (See *id.* at 921-22.)

DRA simply has no confidence in CWS's numbers for this project. The company's engineering estimates and construction contracts have large differences in the amount of money and how those costs are accounted. Aside from the above examples, DRA is concerned about large labor and overhead costs that are never fully explained. (See Ex. DRA-8, p.7-11.) Given these concerns about unjustified costs DRA recommends that these two project be capped at \$227,800 and \$114,00.

**(b) Issues concerning State Funds**

DRA has found mistakes in CWS's accounting for state funds. (See Ex. DRA-8, pp. 7-10 to 7-11.) Moreover, CWS may have been able to receive more low costs state funds had it made the effort. CWS statements about project delays if it sought more than \$500,000 in SRF funding are not persuasive. (See CWS/Duncan Vol.13 RT 866.)

CWS lack of procedures for seeking women and minority owned business contracts is not an adequate reason not to seek more state funds. (See *id.* at 865.) While this may have been a requirement, CWS lack of procedures to address this requirement is not acceptable. Governmental requirements that applicants seek women and minority owned business as contractors or subcontractors are nothing new. CWS knew or should have known about them.

CWS also claims, "[t]here were also stricter guidelines, and I don't recall exactly what the guidelines were." (See *id.* at 866.) Again this is not sufficient grounds to avoid seeking low cost state funds instead of ratepayer funds. Surely, whatever extra guidelines were present were less onerous than the present dispute over this project's costs.

CWS should have sought more low cost state funds but chose not to. To the extent that ratepayer funds are used in lieu of state funds those ratepayer funds should have the same interest/ROE as the should-have-been-used state funds. Furthermore, the Commission should order CWS to address requirements for seeking women and minority owned business in all of its contract procedures. Moreover, while CWS believes its contractor bid of \$616,485 is reasonable DRA finds it to be highly inflated as compared to CWS's internal estimates, and thus should be capped at \$350,000. (See generally CWS/Francis Vol. 13, RT 882-968.) If this reduction frees up more state funds those funds should be used to offset ratepayer contributions to other projects.

**(c) Lack of Competitive Bids**

Perhaps the main reason these projects have expenses that are far higher than CWS's estimates is that there was no competitive bidding.

CWS has a policy to obtain a minimum of two bids on every project over \$1,000. (See Ex. CWS-2, p.2.) For this project, CWS sent out bidding packages: two contractors

declined and one responded. (See CWS/Francis Vol.13 RT 916-17.) CWS found the one bid from West Valley Construction to be reasonable even though it was significantly higher than its own internal cost estimate. (See id. at 917-22.) CWS never sought an additional round of bids. (See id. at 925.)

Later in the project, when Marin County placed additional building requirements on the project CWS sought more bids. (See id. at 926.) However, CWS only asked West Valley Construction to bid. (See id.) Apparently, sub-contractors were also chosen on a single bid basis after the general contractor drove around looking at job sites. (See CWS/Duncan Vol. 13 RT 863-64; see also CWS/Francis Vol. 13 RT 967-68.)

These single source contractors give DRA pause and they should give the Commission pause too. It is difficult to assess the reasonableness of any given bid without at least one other bid for comparison purposes. Furthermore, CWS does not have any extra review and approval policies when addressing uncompetitive bids. (See CWS/Ferraro Vol.13 RT 977.)

## **6. Depreciation Reserve and Expenses**

Through discovery requests and settlement talks DRA and CWS have reached a common recommendation for these costs. For every district at issue, DRA expects these costs to be included in a settlement proposal(s), to be filed separately. These issues will not be addressed further in this brief.

## **7. Rate Base**

Through discovery requests and settlement talks DRA and CWS have reached a common recommendation for this issue. For all districts, DRA expects this issue to be included in a settlement proposal(s), to be filed separately. This issue will not be addressed further in this brief.

## **8. Rate Design**

Through discovery requests and settlement talks DRA and CWS have reached a common recommendation for this issue. For all districts, DRA expects this issue to be

included in a settlement proposal(s), to be filed separately. This issue will not be addressed further in this brief.

### **III. SYNERGIES**

Through discovery requests and settlement talks DRA and CWS have reached a common recommendation for this issue. DRA expects this issue to be addressed in a settlement proposal(s), to be filed separately. Furthermore, the ALJ has requested a “white paper” on this issue. DRA and CWS are working on this request and expect to submit this paper with Reply Briefs as the ALJ requested. (See ALJ McVicar Vol. 13 RT 994.)

### **IV. TOTAL REVENUE BALANCING ACCOUNT**

Through discovery requests and settlement talks DRA and CWS have reached a common recommendation for this issue. DRA expects this issue to be included in a settlement proposal(s), to be filed separately.

### **V. WATER QUALITY AND SERVICE**

Through discovery requests and settlement talks DRA and CWS have reached a common recommendation for this issue. DRA expects this issue to be included in a settlement proposal(s), to be filed separately.

### **VI. RETURN ON EQUITY**

#### **A. Cost of Long Term Debt and Preferred Stock**

After reviewing CWS’s application and workpapers, DRA finds CWS’s position to be acceptable in these areas. (See Ex. DRA-9, pp. 5-1 to 5-2.) DRA also finds CWS’s capital structure to be reasonable. (See *id.* at 2-8.) In fact, CWS is not leveraged as highly as other large water utilities, and thus is a less risky investment than other water utilities. (See *id.* at 3-3.)

## **B. Return on Equity**

CWS seeks a return on equity of 12.2% (11.95% return on equity (ROE) per its models plus 28 basis points per is “risk”). (See Ex. L, p.2) ORA recommends a return on equity of 9.78%, per its models with no risk premium. (See Ex. DRA-9, p. 2-8.)

A public utility is entitled to earn a return on the value of its property used for the convenience of the public. (See *Bluefield Water Works v. Public Service Commission* (1923) 262 U.S. 679, 692.)

The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties. (262 U.S. at 693.)

However, a utility “has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures.” (Id. at 692-693.) In establishing a just and reasonable rate of return, consideration must be given to the interests of both consumers and investors. (See generally *Federal Power Commission v. Hope Natural Gas Company* (1944) 320 U.S. 591.)

The ROE sought by CWS is neither just nor reasonable. DRA’s recommended ROE, on the other hand, is supported by the facts, the law and the Commission’s policies and practices, and should be adopted.

### **1. Risk Profile**

CWS wants 28 basis points added to the results of its ROE models. (See Ex. L, p.22.) CWS believes it has an elevated risk profile due to the need for additional capital to address new water quality standards and asserts the only way to tackle this need is to increase the return on equity. (See Ex. L, pp. 4-10.) DRA, and past Commission decisions, have found that plant investment to address water quality standards is not a risky situation.

If investments in these facilities are reasonable, the capital projects will be included in rate base and CWS will get a return on its investment. (See Ex. DRA-9, p.4-

1.) If the projects are not reasonable then it did not need to raise capital for them in the first place. (See *id.*) It is important to recognize that the Commission has repeatedly stated its goal to improve water quality, and as such there is zero risk that the Commission will disallow prudent investments to improve water quality. (See e.g., Water Action Plan.)

CWS cites a 1992 Commission decision that speculates that increased water standards *may* lead to *some* increased risk. (See Ex. L, p.17, citing D.92-01-025.) But the full quote illuminates that the Commission believes that water companies are still less risky than other utilities and do not need a raise in its ROE. The Commission states,

We acknowledge that water utilities may in future years experience some increased risk due to more stringent state and federal water quality requirements. We also recognize that SoCalWater's risk may be affected by the need to borrow money for its capital improvements. *But we doubt that these specific risks make water utilities riskier than energy and telecommunications utilities. We also question whether these kinds of risk justify an increase in the ROE.* Due to the revenue recovery mechanisms in place for water utilities, we find that water utilities do not face the same overall risks as energy and telecommunications utilities. (See D.92-01-025, pp.\* 25-26 (emphasis supplied).)

Furthermore, as shown below, in the fourteen years since the Commission made that statement water utilities have consistently argued that their risk has increased to the level of other utilities and the Commission has consistently denied that argument.

CWS also believes that it needs a risk premium because of the energy crisis, energy utility bankruptcies, the small size of some of its districts, and the fact that it must estimate costs under forward looking ratemaking. (See Ex. L, pp.18-21.)

CWS thinks that the past energy crisis makes energy unreliable and that this requires that CWS have a risk premium. This is incorrect. First, the Commission has worked hard to ensure that energy utilities have sufficient supplies of reliable power to serve California. Second, the energy crisis happened in a market drastically different from what energy utilities operate in today and thus is unlikely to repeat. Third, CWS

has backup generators in some of its districts to address this issue. Lastly, CWS has regulatory mechanisms in place to compensate water utilities from increased power costs. In short, CWS is grasping at straws when it asserts that the energy crisis of 2001 demands that it have a higher ROE in 2006 and beyond.

To the extent that CWS argues that it is deemed by investors to be a riskier company because it operates in the same state as Pacific Gas and Electric and Southern California Edison Company, which had financial troubles in the energy crisis, it is totally meritless. Both of these companies are on solid financial footings and even if they were not, they have nothing to do with CWS – investors know this and are not as dumb as CWS apparently thinks they are.

CWS also claims that small districts mean it is a riskier company. CWS may have small districts, but investors do not buy stocks in districts they buy stocks in companies. CWS is the biggest publicly traded water company in California. To the extent it has smaller districts it chose to buy those companies. It had an application before the Commission to approve that purchase, at which time it argued that it could buy those companies at an increased ratebase and still save ratepayers money through synergies. (See generally D.00-05-047.) If CWS needs a higher ROE to compensate for those districts then that should have been a factor in the purchase of those districts. To the extent that CWS claims these small districts have a high risk regarding water quality that is an issue that CWS surely addressed in doing its due diligence review of those systems prior to buying them and adjusted the purchase price accordingly. (See Ex. CWS-5, p.13.) Anything less, may be a violation of its duty to its shareholders.

Lastly, to the extent that CWS claims it has a high risk profile because it must forecast costs into the future, CWS argues against the foundation of regulated utility ratemaking – forward looking ratesetting. This mechanism of ratesetting is so established and so engrained into the way utilities are regulated that to argue it requires a higher ROE would be akin saying we need more health insurance expenses because the earth is round thus increasing our risk of a slip and fall. This argument should be dismissed out of hand.

Furthermore, a number of regulatory mechanisms provided by the Commission virtually eliminate regulatory risk for CWS. CWS has balancing accounts for: purchased water, purchased power, and pump taxes. (See Ex. DRA-9, p.3-1.) CWS also has memorandum accounts for catastrophic events, waste contamination, SDWA compliance, 50% fixed cost recovery, and construction work in progress in ratebase. (See *id.*) CWS argues that these balancing accounts as addressed in D.03-06-072 (the earning test decision) actually increase its risk. (See Ex. L. pp.15-16.) CWS is incorrect. The earnings test is designed to limit utility windfalls it does not limit legitimate earnings and in no way does limit CWS's ability or opportunity to earn its authorized ROE. (See Ex. DRA-9, p.4-3.)

In conclusion, CWS's supposed risks are non-existent or are inherent risks to water utilities that do not represent a specific situation that CWS faces. The Commission has stated that inherent risks are not grounds for adjusting the ROE upwards.

A premium on the authorized ROE is not appropriate for inherent risks. This is because the effect of those risks should already be incorporated into the model results, to the extent that water utilities are properly included in the model proxy groups. (D.03-08-069, p.\*54.)

The Commission should not compensate CWS for risks inherent to utilities that are previously accounted for in the fiscal models used to estimate a return on equity.

## **2. Models**

After discussing its inaccurate belief that the company is a risky investment, CWS discusses how it used the Discounted Cash Flow (DCF) and Risk Premium (RP) methods to reach its ridiculous high request of 12.2% ROE. (See Ex. L, pp. 11-15.) DRA also uses the DCF and RP models but uses relevant input into those models to reach a result of a ROE of 9.78%.

The main difference between the model inputs is that DRA uses water utilities to derive a ROE for CWS, while CWS augments its water utility data with gas utility data. (Compare Ex. CWS-9, p.2-1 with Ex. L, p.11.) CWS's model input is inappropriate and must be rejected.



The Commission has repeatedly, over decades, stated that using gas utilities to derive water utility ROE recommendations is not reliable.

A small sample of the Commission's statements follows:

- “We also find that natural gas rates of return are not relevant for Apple Valley [Water Company]. The cost recovery and market risks are totally dissimilar.” (See D.05-12-020, pp.\*15-16.)
- “San Gabriel’s [Water Company] use of data including use of a ‘comparable group’ of gas utilities to perform its DCF analysis comparison is questionable.” (See D.04-07-031, p.\*86.)
- “We find it disappointing that CalAm has relied so heavily in its analysis on comparisons with gas utilities, a practice the Commission has repeatedly rejected in the past because water utilities are less risky.” (See D.04-05-023, p.\*80.)
- “We are not impressed with CalAm’s attempt to analyze water company costs of equity by using gas utility and other, non-utility companies’ data; that approach, as ORA notes, we have consistently and unequivocally rejected in the past.” (See D.03-02-030, pp.\*95-96.)
- “Due to the revenue recovery mechanisms in place for water utilities, we find that water utilities do not face the same overall risks as energy and telecommunications utilities.” (See D.92-01-025, p.\*26.)
- “The principle thrust of CWS’s financial testimony is that the Commission errs when it refuses to compare other types of utilities to water companies. We will not consider this concept further. It has uniformly been rejected whenever it has been raised.” (See D.90-02-042, p.\*44.)

DRA wonders how many more times water utilities will waste the Commission’s time arguing this meritless position. In accordance with long standing and repeatedly tested precedent the Commission should reject CWS use of gas utilities as a proxy group to establish its ROE.

Unfortunately for CWS, the use of irrelevant data inputs into its DCF and RP models makes any analysis from those models completely unreliable and untrustworthy; thus, CWS's position is without any supportable factual basis.

DRA has performed an analysis that is supportable and reasonable, with results that have a high degree of confidence. Furthermore, DRA uses more up to date data when calculating forecasted earnings growth rates, and forecasted interest rates. (See Ex. DRA-9, p.4-2.)

To begin with DRA only uses relevant data input. DRA has determined a range of ROE for CWS by applying the DCF and RP models to a group of comparable water utilities. (See *id.* at 2-1.) DRA chose five water utilities as a comparable group using the criteria that (1) water operations account for at least 70% of the utility's revenue, and (2) the utility's stock is publicly traded. (See *id.*)

Applying this group to the DCF model results in a ROE of 9.35%, which is the average expected dividend yield over three, six and twelve months.<sup>1</sup> (See *id.* at 2-6.) This is the sum of taking the expected overall growth rate of 6.38% and the comparable water utilities dividend yield. (See *id.*) DRA calculated the expected overall growth rate by reviewing and analyzing: historical growth rates, both earnings and dividend growth, and sustainable growth; and, forecasted growth rates. (See *id.* at 2-3 to 2-5.)

Applying this group to the RP model results in a ROE of 10.22%, this is the average of five, ten, and thirty year Treasury bond yield. (See *id.* at 2-8.) DRA has used the Data Resource Inc. (DRI) report from August 2005 to forecast interest rates for the test period, where as CWS application used three other sources. (Compare Ex. DRA-9, p.2-7 with Ex. L, p.14.) The DRI source has been consistently accepted by the Commission for determining the cost of capital. (See Ex. DRA-9, p.2-7 (citing D.92-11-047).)

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<sup>1</sup> DRA adjusted the dividends to account for quarterly compounding, in order to account for the time value of money. (See Ex. DRA-9, p.2-2.)

The results from the two types of models are similar and their average is 9.78%. (See *id.* at 2-8.) The Commission should adopt this number as CWS's ROE.

CWS believes that DRA's sample size is too small, and its model too historical in its viewpoint. (See Ex. CWS-5, pp. 1-2.) CWS is incorrect.

Regarding sample size the Commission has a choice between DRA's model which uses relevant data and CWS's model which is tainted by the input of irrelevant data. As CWS points out there has been a number of entity consolidations which have reduced the number of public traded water utilities. (See CWS-5, p.3.) Assuming *arguendo* the relevance of CWS's belief, the solution is not to augment the sample size with irrelevant pieces of data. DRA's sample size is sufficient in scope to give confidence to the result of the model, and given a choice between DRA's model and CWS's tainted results, the only reasonable choice is to adopt DRA's proposal of 9.78% ROE.

Regarding the use of historical data, CWS believes that investors do not look at historical growth rates "otherwise, markets would not change directions." (See Ex. CWS-5, p.6.) Markets change for a wide variety of reasons. To make reasoned decisions investors often look to past performances and an indication of future performance. This is normal and wise, and there is no reason why CWS's investors would act differently.

Incredulously, CWS also argues that because it has retained a high level of earnings in the past it now needs a high ROE to increase its dividend growth. (See CWS-5, p.6.) To retain earnings or distribute them as dividends is a management decision of the utility. (See CWS/Tootle Vol.12 RT 793.) It is not the Commission's responsibility to ensure that utility management gets to retain earnings while at the same time increasing dividends. Moreover, the fact that they have been able to retain earnings and still attract new capital<sup>2</sup> bodes well for the fiscal health of the company.

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<sup>2</sup> In June 2004, the parent company issued 1,250,000 additional shares of common stock and 187,500 shares of common stock due to options exercised. (See Ex. L, p.9.)

### **3. Additional analysis**

CWS states that Standard and Poor's lowered its rating from AA- to A+, while its outlook changed from negative to stable. (See Ex. L, p.6.) While DRA acknowledges that this is not an extremely high rating, any rating above BBB is considered investment grade. (See Ex. DRA-9, p.3-3.) Moreover, this rating has not impaired the company's ability to issue long term debt at favorable rates and the company currently has the capacity to meet its financial commitment on its debt. (See *id.* at 3-4.) Moreover, it is clear that CWS's stock price has climbed over the last few years and its dividend growth has been steady. (See Ex. DRA-14.)

## **VII. RATEBASE EQUALIZATION ACCOUNT**

Through discovery requests and settlement talks the parties have reached a common recommendation for this issue. DRA expects this issue to be included in a settlement proposal, to be filed separately.

## **VIII. WATER REVENUE ADJUSTMENT MECHANISM**

Pursuant to ALJ McVicar's granting of DRA's and CWS's request for a rule 48(a) extension of time, briefs on this issue are now due on March 9, 2005.

## **IX. CONCLUSION**

DRA and CWS have considerably narrowed their differences during the course of this proceeding; however, certain disagreements remain. CWS seeks to have ratepayers pay for plant additions that are unjustified and unsubstantiated. Alternatively, DRA seeks to assist ratepayers in with the formulation of just and reasonable rates while attaining the goal of clean potable water. Furthermore, CWS seeks to unreasonably increase the rate of return on equity by arguing non-existent risks and incorrect comparisons to gas utilities.

The Commission should adopt DRA's proposals and disallow CWS's unjustified cost expenses and policy positions.

Respectfully submitted,

/s/ JASON REIGER

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February 27, 2006

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of **OPENING BRIEF OF THE DIVISION OF RATEPAYER ADVOCATES** in **A.05-08-006, et al.** by using the following service:

☒ **E-Mail Service:** sending the entire document as an attachment to an e-mail message to all known parties of record to this proceeding who provided electronic mail addresses.

☐ **U.S. Mail Service:** mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses.

Executed on February 27, 2006 at San Francisco, California.

/s/ ALBERT HILL

\_\_\_\_\_  
Albert Hill

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address and/or e-mail address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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